

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION**

NESTLE USA, INC.,)	Case No. 4:06CV00005
)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
UNITED SUGARS CORPORATION)	By: Jackson L. Kiser
)	Senior United States District Judge
and)	
)	
NUTRITIVE SWEETENERS COMPANY, INC.,)	
)	
Defendants.		

On February 28, 2006 Defendant Nutritive Sweeteners Company, Inc. filed a Motion to Dismiss Pursuant to Rule 12(b)(6) [Dkt. No. 4] against Plaintiff Nestle USA, INC. in the above-styled matter. On May 30, 2006 Defendant Nutritive Sweeteners Company, Inc. filed a Motion to Dismiss or Stay United Sugars Corporation's Cross Claim against Defendant United Sugars [Dkt. No. 22]. A Pre-Trial Order ("PTO") [Dkt. No. 13] for this case was entered by this Court on April 3, 2006.

Paragraph five of the PTO states that it is the moving party's obligation to either bring the motion for a hearing or, if both parties agree, to notify the Court that the motion is submitted on briefs. Paragraph five further states in bold and uppercase font that "any motion which is not brought on for hearing or submitted on briefs within 90 days from the date it is filed will be dismissed and the Court will not entertain a renewed motion of the same issue(s) except for good

cause.”

Defendant Nutritive Sweeteners Company, Inc. has failed to comply with the plain language of the PTO by not setting a date for hearing its Motions or, alternatively, notifying the Court that the parties have agreed to submit the Motions on briefs within 90 days of filing its Motions. Because more than 90 days have passed since the Defendants filed its Motions, I must **DISMISS** Defendants’ Motions.

The Clerk is directed to send a copy of this Order to all counsel of record.

Entered this 27th day of October, 2006.

s/Jackson L. Kiser
Senior United States District Judge